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A NATIONAL POLICY AS TO INDIAN ALLOTMENTS HELD ENFORCEABLE BY BILL IN EQUITY.

The easy assurance with which the prevailing opinion by a bench of the Eighth Circuit Court of Appeals assumes that the United States has the right to file a bill in equity to set aside thousands of conveyances by Indian grantors—full-fledged citizens of the United States and state of Oklahoma—merely by making the grantees parties, upon the ground that such conveyances are forbidden by express national policy, makes the ruling the more startling.

In the court above mentioned a decision was rendered on June 8th, 1910, in seventeen cases decided by the Circuit Court for the Eastern District of Oklahoma, in which a demurrer to the bills filed by the United States had been sustained. The grounds upheld below were want of interest in the government in the subject-matter of controversy, a defect of parties and multifariousness. This ruling is reversed. United States v. Allen et al., not yet reported.

Judge Amidon, speaking for himself and Judge Hook (Adams, C. J., dissenting), says that the bills charge the making of many thousand conveyances in violation of express restrictions against alienation of allotments of Indian lands for specified periods of time. "The restrictions against alienation arise out of numerous statutes and treaties and vary according to such matters as the amount of Indian blood of the allottee, whether the land was a homestead and whether it was held as an original allotment or by inheritance. The allottees are not made parties, and it is not charged in the bills that the conveyances were obtained by fraud, misrepresentation or for an inadequate consideration. They are assailed solely upon the ground that they were made in violation of the restriction which congress imposed upon alienation of these allotments."

Judge Amidon further says: "It may well be conceded that the federal government has no legal or equitable estate in the allotments and, if such an estate is necessary, it has no standing in court. It is, however, too plain for controversy that the federal government imposed restrictions upon alienation, which was the government's main reliance for the social and industrial elevation of the Indians. To say it has no standing in court for the enforcement of its policy is to make its restraints upon alienation a *brutum fulmen*. Congress intended that both the Indians and the white race should obey its limitations. A transfer of the allotments is not simply a violation of the proprietary rights of the Indian. It violates the governmental rights of the United States. If these Indians be divested of their lands, they will be thrown back upon the nation, a pauperized, discontented and possibly belligerent people."

Thus runs the rhetoric that stands for a judicial emanation, and we will endeavor to puncture it.

Either the governmental restriction is self-enforcing or subject to displacement, that is adversely affected by deeds from Indian allottees. If the former, the government can never discover the time when its interposition in behalf of its policy is needed, and, therefore, the self-executing restriction could not be conceived to have intended that the government should go into court to protect it. That it is in and of itself sufficient to keep unimpaired and unassailable governmental policy, the elaborate opinion of Judge Campbell, the trial judge, seems to demonstrate very conclusively. 171 Fed. 907.

Thus he cites a case decided by a different bench of this same court (one of those sitting being Hook, C. J.) where a patent to a Quapaw Indian contained a proviso "that said tract shall be inalienable for the said period of twenty-five years."

Judge Philips there said: "The language

of the act and the patent could not have been more exact and clear to express the purpose and the policy of the government to deny the power and right of these allottees to dispose of the lands in any manner until after the stated period of twenty-five years. * * * There is but one opinion among the courts, with the single exception of the ruling in said United States Court of the Indian Territory, as to the construction of such acts of congress and patents made thereunder, and that is that any and all schemes and devices resorted to for the purpose of acquiring title to the Indian allotments during the period of such limitation are abortive; and this for the palpable reason that it is a period of absolute disability on the part of the Indian to alienate his lands." Goodman v. Buffalo, 162 Fed. 817, 89 C. C. A. 525.

Schrimpschur v. Stockton, 183 U. S. 295, seems to the same effect and cites approvingly a Kansas case, that a deed made of land which by treaty was made inalienable was absolutely void as protecting grantee in his possession and declaring, that he could not use it as color of title "in building up an adverse possession, estoppel or limitation as the transaction was void *ab initio*." Justice Brewer in Wiggan v. Conally, 163 U. S. 56, calls the restriction "a limitation to the power of the individual Indian in respect to alienation."

It is hard to say of any limitation that it operates *ex suo vigore*—needing no decree of any court in its aid as declaring acts done in violation of it void—if the restriction upon alienation of Indian lands is not such. If a decree adds nothing to the matter why entertain a suit to obtain a decree?

But suppose, that such acts of alienation tend towards the divesting of the Indians of their lands, then is it not necessarily true, that these acts are of some legal effect because there is a contractual status on both sides in the transactions? If there is, is it not as clear as noonday, that, if the grantees must surrender, under decree of court, something that is of value until that decree be rendered, all of the parties interested should be before the court?

Let us illustrate in the case of a minor who has received and holds the consideration of a contract to which the disability of minority attaches. Would he not be required to return what he had received and still had on hand? Shall it then be said, that, because the government can interpose to save its policy from a situation, for which the Indian is in a measure responsible as well as his grantee, a court of equity will not also require his presence in court so that the grantee may secure restitution from him, or have a judgment therefor? If any other course could be taken, then the government is interposing to assist fraud on the part of its ward. This observation seems to us especially pertinent in view of the fact that it is stated that the conveyances are not attacked for fraud, misrepresentation or inadequacy of consideration.

But there is a larger general question back of the theory of this litigation, and that is, that, though the national government makes citizens out of these Indians, yet it has a peculiar policy with reference to their advancement in thrift and progress in civilization, which it cannot assert as to other citizens without interfering with the domestic affairs of a state. Is it not a very large conclusion to draw from a small premise to say that, though the federal government has endowed an Indian with the full stature of citizenship and made him *sui juris*, except as to an allotment of land he happens to get from his tribe, his individual welfare may be looked after, merely because an attempted preservation of that land suffers from faulty legislation? Mind you, if the legislation cannot be defeated by the Indian and the white man combined, the government has nothing to worry over. But wherein the Indian does not suffer from disability he should stand like other citizens, and deteriorate or advance alike as they do. If the government's policy, as exemplified by its statute as to disability, is short-handed

in securing fullest protection, that policy should not be extended by judicial amendment. *Ita lex scripta est.*

Furthermore, as the welfare of the former Indian ward has with his putting on the robe of citizenship ceased to be the peculiar concern of the national government and the restrictions on alienation go along with his investiture of title in severalty, all being *uno flatu* in the scheme of tribal dissolution, for whose benefit besides that of the Indian, in a public way, is this governmental plan?

It would seem folly to say it was intended more for the benefit of the country at large than for the particular benefit of the state of the Indian's domicile. If so, then the "high and delicate trust" the United States claims to have been vested with was transferred to the sovereign state of Oklahoma.

When the tribes and the government determined on such restrictions all were presumed to know that a state is the only competent *parens patriæ* (if there is any) of the citizen as to his property rights and that "the high and delicate trust" would pass from the national government when the territory wherein it was made becomes a state.

And this the government seems to recognize in the enabling act for the formation of the state of Oklahoma. But it would require considerable distortion of intent to say, that the proviso in that act carried the United States into the state as a *parens patriae* for the Indian and thus generally qualified his allegiance and the duties owing to him differently from other citizens.

Here is the language of the proviso: "Provided, that nothing contained in the said constitution shall be construed to limit or impair the rights of persons or property pertaining to the Indians of said territories (so long as such rights shall remain unextinguished), or to limit or affect the authority of the government of the United States to make any law or regulation respecting such Indians, their lands, property or other rights by treaties, agreement, law or otherwise, which it would have been competent to make if this act had never been passed."

These words seem badly chosen and too sweeping, but we imagine that an Indian that is a full-fledged citizen cannot be generally legislated about, as a person, differently than a white man or a negro. And we further imagine, that his title in allotted land, whatever its character, cannot be taken away from him any more than can any vested right, by any legislative enactment. But let construction go to the uttermost sweep of this proviso and still it should not carry the nation into the state, for the limitless future, as a sort of foreign guardian of its free residents. Nothing should pass by intendment in creating a role for the national government that is inherently opposed to state sovereignty.

Judge Adams speaks of this decision creating a new head in equity jurisprudence, to which the Debs case not only gives no support, but inferentially condemns. We think, too, he clinches the reason for his dissent by showing that express legislation requires that in an individual case the Indian grantor must be made a party. In a suit involving two, three or four, ought grantors to be made parties? If the answer be yes, then in its final analysis, jurisdiction of each of these bills depends on the fact that it is against thousands of grantors.

But why should the rights of grantors be thus affected, if they have a substantial interest in grantees being brought into court? They have an interest in obtaining affirmative relief against such grantees, unless these quasi-minors are favored beyond all other people of whom we have any possible conception.

As we interpret what Judge Adams says about the federal government interposing as it has in this matter, a court, that is a long distance from the scene, should ask itself whether or not it is advantageous for these Indian citizens to be treated as if they were wholly irresponsible. It is reasonably sure that, if the state courts of Oklahoma are going to deal justly with this

class of its citizens, such interposition as has been countenanced is injurious. If their rights, acquired through laws of the United States, are ever invaded by these state courts, a greater tribunal than the Eighth Circuit Court of Appeals is their sure refuge.

NOTES OF IMPORTANT DECISIONS

COURTS — CLASSIFYING DICTA AS THOSE JUDICIAL AND THOSE MERELY OBITER.—When we ascertain that an announcement is made in an opinion that is not necessary to the decision of a question before a court, its utterances ought not even to bind its particular author and much less the tribunal of which he is a member. But this rule has, according to an opinion handed down by the Supreme Court of Vermont its qualification. Derosia v. Firland, 76 Atl. 153. That opinion says: "Perhaps it cannot be said that the court's statement of the law respecting the right of a party to terminate a contract of hiring, and the resulting liability, was essential to that disposition, yet it was an expression of opinion upon a point argued by counsel and deliberately passed upon by the court; and if it is a dictum, it is a judicial dictum as distinguished from a mere obiter dictum; i. e., an expression originating alone with the judge who writes the opinion, as an argument or illustration. (Rhoads v. Chicago & A. R., 227 Ill. 328, 81 N. E. 371, 11 L. R. A. (N. S.) 623, 10 Am. & Eng. Ann. Cas. 111; Brown v. Chicago & N. W. R. R., 102 Wis. 137, 77 N. W. 748, 78 N. W. 771, 44 L. R. A. 579.)"

The above distinction is thus expressed in Anderson's Law Dictionary, but, after all, the inference is far from clear that judicial dicta should be classed with binding precedents. That counsel argue certain propositions is not a very satisfactory test. They are supposed to survey the entire horizon of possibilities and to claim results their way both positively and in the alternative of some of their contentions not being accepted. In common parlance no advocate places, unless he has to, all of his eggs in one basket.

This thing of an opinion setting forth several propositions, either of which standing alone justifies a court's judgment has the potentiality of much confusion—especially when a majority ruling is only attained by some member or members, concurring in the result or concurring specially.

It may be that the confusion is a little cleared up by concurrence specifically, but it takes some tediousness of attention to separate the wheat from the chaff. We have noticed in some decisions where paragraphs are assented to and some dissented from, and a case may be decided a certain way with no particular proposition receiving the assent of a majority of the court. It were better to file no opinion at all in a case like that.

Lately we noticed a case at page 417 of 70 Cent. L. J., where the opinion went outside of the briefs altogether and, planting itself upon a general ground, remarked, somewhat incidentally, on a purely special feature in the case, sufficient to control the conclusion that was reached. The general ground we thought untenable, and the court admitted it stood quite alone in the view it had taken.

Giving a good reason, that pertains particularly to a case before the court, for a conclusion that it reached ought to be sufficient, and no general principle ought to be announced in any case unless the case demands it, and we rather think that where a court is well satisfied with one reason it does not care to explore for others. When, however, it does not feel sure of its ground, it wishes to save itself by relying on something else. In that way we obtain a large grist of indifferently written opinions. Some judges appear to delight in killing a contention and skinning it too.

DIVORCE—NECESSITY OF CURING DEED BY WOMAN WHERE HER DIVORCE IS NOT RECOGNIZED WHERE LAND LIES.—An aftermath of the Haddock case is found in the case of Blondin v. Brooks, 76 Atl. 184, decided by Vermont Supreme Court.

Blondin brought suit to quiet title, claiming under a quit-claim deed from Mary E. Chennette. Mrs. Chennette failing to obtain a divorce in Vermont went to New Mexico, living on a ranch with her brother-in-law and sister some eighteen months, obtaining during said period a divorce from a New Mexico court, her husband remaining at the Vermont domicile.

Very soon after the divorce was obtained she returned to Vermont and later executed the deed under which complainant claims. The Vermont court finding that the New Mexico decree was obtained by fraud, the New Mexico court being cheated by the claim of bona fide residence, says such a decree being baseless for want of jurisdiction "will not be recognized abroad on any ground, not even that of comity, which is not a rule of law, and, therefore, does not command, but only persuades, and fraud does not persuade but discourages."

It was also held that it was competent for defendants who were strangers to impeach such a decree collaterally, as it affected their interests. All these questions were said to be open to evidence aliunde because, as by the Haddock case, the decree was not protected by the faith and credit clause of the federal constitution, even though the decree might be recognized in New Mexico.

But the case was sent back with directions to bring in the husband's renunciation, which by ruling of the trial court had been kept out "and when it is brought in to enter a decree according to the prayer of the will."

CRIMINAL LAW—LARCENY OF A CHECK AND PROOF OF VALUE.—In State v. Hinton, 109 Pac. 24, the Oregon Supreme Court seems to have about declared that a presumption may be based upon another presumption in the proof of a necessary fact to the establishing of guilt. It needs no great citation of authority to show that this is not allowable, but for a recent holding on this subject, see State v. Jacobs, 134 Mo. App. 182, 113 S. W. 244.

The proof in the Hinton case shows that defendant was charged under Oregon statute which declares that if any person shall steal a bill of exchange or other thing in action he shall be deemed guilty of larceny and upon conviction thereof, if the property stolen shall exceed in value $35, the crime shall be a felony, and under that a misdemeanor.

The check alleged to have been stolen was for $60.50. The opinion says: "There was no direct evidence that Sterritt (the drawer) had any money to his credit, subject to check in the First National Bank of Heffner, but it appears he had received value to the amount of the face of the check, and until something to the contrary is shown it must be presumed that private transactions are fair and regular, and that the ordinary course of business has been followed. It is not usual or customary for people to give checks upon banks for the payment of money, unless they have the amount thereof to their credit, or have made some special arrangements for credit, against which they may draw. * * * Although no money may have been in the bank to the credit of the drawer, still the check represents to the payee, from whom it was taken, a chose in action to the amount of its face, for upon its dishonor the holder has his recourse upon the maker to recover the amount of the consideration of the check. It also appears from the defendant's testimony that after he had obtained possession of the check he transferred it to a third party, receiving therefor $50.50 in money and a credit of $10 on his account, thereby evidencing that it possessed that much value in defendant's hands."

We hardly remember to have seen so much disregard for a logical technical cause of proof as is here exhibited. Everything is assumed against the defendant, and nothing exhibits this more clearly than the final sentence in the above extract. The exact course taken in disposing of the check would have been taken had it been actually worthless. The inference upon inference in the preceding sentences seems too clear for discussion—even going to the length of allowing the jury to convict had it been shown that the check would not have been honored if presented—upon the presumption that the drawer was financially responsible. The court should have held that no jury would have had the right to say, upon such evidence, that guilt was shown beyond a reasonable doubt.

At common law the rule was strict that value must be proved in larceny, and no code system mitigates this when felony depends upon amount. In Wigginton v. Com. (Ky.), 114 S. W. 1185, and Close v. State (Tex. Civ. R.), 117 S. W. 137, show the strictest regularity in proof is required to show grand larceny.

CORPORATIONS—LIABILITY OF TRANSFEREE OF STOCK FOR UNPAID ASSESSMENTS.—In California the rule as to transferee of shares of stock in a corporation seems excessively strict. Perkins v. Cowles, 108 Pac. 711.

In this case certificates of stock were sold in open market, and there was nothing on their face to indicate that the stock was not fully paid, but in fact they were not fully paid for. The court says: "Whatever may be the rule in sister jurisdictions, and we are referred to cases therefrom holding transferee takes them free from any liability for calls for assessments, this is not the rule obtaining in this state." Such certificates are held not to be negotiable securities, and they are held to be subject to assessment for subscription calls. Further, it is said the transferee becomes subject to all the liabilities and obligations of the transferrer respecting the stock.

In other words, as we understand the ruling,

a transferee stands like a vendee of land expressly assuming a mortgage, but the transferrer is not necessarily released. In Illinois it has been ruled that the transferee becomes thus liable where he has notice of the facts. Moore v. U. S. One Stave Barrel Co., 141 Ill. App. 104; affirmed, 87 N. E. 536.

A transferrer has been held to remain liable for unpaid part of subscription, though transferee becomes also liable. McRim v. Glenn, 66 Md. 479, 8 Atl. 130; Hambleton v. Glenn, 72 Md. 331; 20 Atl. 115; Hamilton v. Glenn, 85 Va. 901, 9 S. E. 129.

It has also been held that personal liability does not accrue to transferee. Messersmith v. Sharon Law Bk., 96 Pa. St. 440. But he may expressly assume such. Citizens & Miners' Bank v. Gillespie, 115 Pa. 564.

LIBEL AND SLANDER—WORDS LIBELOUS PER SE.—In Cole v. Milspaugh, 126 N. W. 626, the Minnesota Supreme Court considered the question whether it was libellous and actionable per se to write of a clergyman an applicant for a pulpit: "I would not have anything to do with him or touch him with a ten foot pole."

The complainant alleges that these words were written by the defendant maliciously to the members of a committee to prevent their recommending plaintiff's appointment. The court said: "We cannot avoid the conclusion that such a statement so made and emanating from a responsible scurce, might tend to expose a clergyman, situated as was the plaintiff, to contempt and injury in his profession. Therefore under the allegations of the complaint evidence might properly be received which would justify a jury in so finding."

These words seem to us far from imputing any crime to any one. They might mean almost anything or any number of things perfectly consistent with the moral character and professional reputation of a minister. Mere malice in their employment does not give any certainty to their import, because those to whom publication is made would not for this take them in a different sense. The writer may not have considered him competent as an administrator of temporalities, or was not enamored of his style of preaching, or have thought his disposition was too aggressive or the reverse. The committee was gathering the concensus of opinion as to the kind of minister that would suit, and here was a mere slangy expression of opinion that the applicant was not suitable, when a judgment in this very thing was asked for. This action being somewhat technical in character, the presence of malice does not seem to meet the requirement of its being or not maintainable.

"THE THIRD DEGREE"—AN ILLEGAL PROCEDURE.

There has recently been much popular discussion of what is known as the "third degree" or "sweatbox" system of obtaining confessions from prisoners held for trial. There can be no room for doubt as to the illegality of this mode of procedure, and there appears likewise to be well nigh a consensus of opinion among fair-minded and intelligent persons that, from a moral and just viewpoint, it must be regarded as an evil that should be suppressed.

I shall endeavor to give a statement of the law bearing upon the point in a form that, while fully accurate, may render it intelligible to the popular understanding. It may be premised, that there is nothing at all uncertain as to the law on the subject, and that there should be no trouble about coping with a situation that, if the accounts of the daily press are to be believed, has grown to the dimensions of a scandal.

It is a maxim of our law, that every man is presumed innocent of crime. This presumption starts with the accusation and continues until the rendition of the verdict. This is no platitude, no bit of fine speech, designed for mere rhetorical use. It is based upon fundamental concepts of justice, and the provisions of the common law designed to enforce its principle are, of all the safeguards of the security and rights of the citizen, the most essential. To see these rights and this security habitually invaded and these laws constantly and openly violated by those charged with the active enforcement of law, is a spectacle and an example more degrading and demoralizing in its effects than all the violence and lawlessness of the criminal classes or the escape from conviction and punishment of scores of notorious offenders.

It is not the law itself that is at fault. That is positive in its prohibitions and adequate in its sanctions. The care and providence of the law in this regard begin with the moment of arrest of the accused. It is an entire mistake to suppose that the

law at any time places a prisoner at the mere mercy of the officer having him in custody, or that the officer has any powers or authority other than to secure the person of the accused, so as to prevent his escape.

The common law is plain, clear and positive, that after arrest the accused must, without unreasonable or unnecessary delay, be brought before a magistrate for examination.[1] The officer has no discretion either as to the time during which the prisoner is to be detained or as to the place of detention. In the absence of express statutory provision imprisonment must be in the common jail,[2] and this custody must not be shifted or changed.[3]

There is no authority in law for holding a prisoner in a special lockup selected by the police for the convenience of "sweating" the accused. Such a detention amounts to a false imprisonment, indictable as a common-law misdemeanor.[4] Every confinement of the person, unless it is in manner expressly authorized by law, is illegal and indictable,[5] as well as the subject of an action for damages. The mere question of specific evil intent or wrongful motive is immaterial in this regard.[6]

In addition to this, here, as in all other cases of illegal restraint or imprisonment of the person, the courts are fully authorized to afford speedy release from improper confinement by means of the writ of *habeas corpus*. "Safe custody" and not punishment or needless hardship is the measure and criterion of the authority and powers to be exercised by peace officers in the matter of holding the accused for trial.[7]

It is to be further noted, that any physical force unlawfully used against a prisoner by his custodians amounts to assault and battery, and that any oppressive abuse of authority by a public officer of any grade or class is indictable at common law as malfeasance in office.[8]

In regard to the specific matter of extorted confessions it may be observed, that in the just, wise and humane provisions of our common law there can be found remedy of efficacy adequate to meet this abuse. I am firmly convinced, that if the law on this subject, as embraced in clear decisions of courts of the highest authority, be administered in a broad and liberal spirit, the followers of the gentle sport of "sweating" will find their occupation gone.

The law is too well settled to admit of discussion or to require extended citation of authorities, that a confession extorted through any sort of duress or violence,[9] or one procured in consequence of "inducements" held out to the accused, calculated to excite his temporal hopes or fears,[10] is inadmissible in evidence. An inducement held out by or proceeding from a person in authority renders a confession following inadmissible, unless it is affirmatively shown, that the inducement did not take effect or had ceased to operate.[11]

"Person in authority," it may be briefly stated, means one engaged in or about the prosecution of the person charged or having any concern or interest that apparently authorizes him to interfere with the matter.[12] An officer making the arrest is such a "person in authority";[13] and it has been ruled, that the accused must not be entrapped by him into confessing, or even questioned, without being cautioned against criminating himself.[14]

This is but a sketch in barest outline of

(1) Chitty. Cr. L. 59; 1 Russ. Cr., 9 ed., 1044; Twilley v. Perkins, 77 Md. 252; Kirk v. Garrett, 84 Ib. 383; Bergeron v. Peyton, 106 Wis. 377.

(2) 1 Chitty. Cr. L. 107-108.

(3) Bac. Abr., Commitment, C.

(4) 3 Bl. Comm. 127.

(5) Floyd v. State, 12 Ark. 43; Jackson v. Knowlton, 173 Mass. 94; Bergeron v. Peyton, supra.

(6) Colter v. Lower, 35 Ind. 285; Boeger v. Langenberg, 97 Mo. 390.

(7) 4 Bl. Comm. 300.

(8) 1 Russ. Cr., 9 ed. 200; Hiss v. State, 24 Md. 556; Friend v. Hammill, 34 Ib. 298.

(9) Bram v. U. S., 168 U. S. 532; Ammons v. State, 80 Miss. 592; State v McCullum, 18 Wash. 394.

(10) 3 Russ. Cr., 9 ed., 368; 1 Greenl. Ev. sec. 229.

(11) Bram v. U. S., supra.

(12) 3 Russ. Cr., 9 ed., 385-86; 1 Greenl. Ev. secs. 222-23.

(13) Bram v. U. S., supra.

(14) Reg. v. Histed, 19 Cox C. C. 16; State v. Albert, 50 La. Ann. 481.

the law relating to confessions; but it will serve to lead up to the main consideration here intended to be set forth.

The solution of the question of coping with the evil of "sweating" prisoners appears to me to be very simple. The object is, of course, *to get evidence to convict.* If it is once clearly understood, that this end cannot be secured in this way, the function of conferring the "third degree" will lose all its charms for the "force." And why may this not be? All that is necessary is a resort by fearless and broad-minded judges to one of those devices for the circumvention and defeat of wrong and fraud in which the common law is so fertile. It is well-settled law, that a confession is admissible against the accused only provided it was freely and voluntarily made and provided farther, that the fact that it was so made is first ascertained and determined by the court on due preliminary inquiry, *the burden of proving such fact being on the prosecution.*[15]

It would be unjustly disparaging the dignified and learned gentlemen who preside at the trial of criminal cases in our courts to say that they do not at least suspect what every child in their community knows, to-wit, that the alleged voluntary confession ordinarily relied on was not the spontaneous outpouring of a guilt-burdened conscience, quickened into action through grateful response to the touching kindness of captors and keepers. Things don't happen that way. True, in such cases the overwhelming testimony, so far as mere numbers of witnesses go, is in support of the confession as entirely free and voluntary. It is the wretch on trial against the field. What then is the judge to do? Palter with his conscience? Not at all. Let him simply not shut his eyes to what everybody else sees and let him say that he is not judicially convinced of that which in his heart he disbelieves. In police phrase, let him act on "suspicion."

Of course, there is always room for doubt as to whether the confession so excluded was not, after all, free and voluntary and should not justly have been admitted. But let the benefit of that doubt in every instance be given, not to the prosecution, but to the prisoner. Then will a great evil cease in our midst and the "sweat-box" be relegated to the *rumpelkammer,* where it belongs.

LEWIS HOCHHEIMER.

Baltimore, Md.

(15) Reg. v. Thompson, 17 Cox C. C. 641; Watts v. State, 99 Md. 30; Williams v. State, 72 Miss. 117.

MASTER AND SERVANT—WRONGFUL DISCHARGE.

COOPER v. STRONGE & WARNER CO.

Supreme Court of Minnesota, May 27, 1910.

By "other employment," as used in the rule making it the duty of the servant discharged in violation of a contract of hiring to seek "other employment," is meant employment of a character such as that in which he was employed, or not of a more menial kind.

O'BRIEN, J.: Defendant is a manufacturer and retailer of millinery goods. In part, its business consists in maintaining millinery departments in stores located in different localities. Plaintiff had been employed by defendant as manager of one of those departments, maintained by it in Dubuque, and claims to have subsequently entered into a contract with defendant for similar employment from March 1 to August 1, 1909, at a salary of $25 per week. In February, 1909, plaintiff was directed to take charge of a millinery department conducted by defendant in a store at Duluth. She continued in the position for two weeks, when she was superseded by another woman, but reuqested to remain in the department as a sales clerk at the same salary. This she refused to do, insisting that her contract with the defendant was that she be employed as the manager of some one of the departments owned by the defendant, and offered to accept such position in any locality defendant might designate. The defendant failed to furnish plaintiff with a position as manager, and on the trial insisted that the contract was only to pay the plaintiff $25 per week between the dates mentioned, without reference to the particular grade of the position in which the plaintiff should be employed. It further appeared that plaintiff was offered another position as a saleswoman by another firm at $20 per week, which she refused to accept. The

action was tried by a jury in the municipal court of Duluth, and a judgment in plaintiff's favor was affirmed on appeal to the district court.

The contentions of the respective parties as to the terms of the contract were fully submitted to the jury; but the instructions were to the effect that, if the contract of hiring was that plaintiff was to be employed as manager, she was not required to accept employment as saleswoman. Defendant claims this as error, arguing that there is practically no difference in such employment, inasmuch as the manager of the department acts also as a saleswoman, her duties as manager being merely additional responsibilities, and that relieving the plaintiff of them involved no degradation or loss of caste, and imposed upon her no duties which were dissimilar to some of those formerly performed by her.

The authorities seem to support the conclusions upon this subject given in Wood's Master & Servant, sec. 127. The servant, discharged in violation of the contract of hiring, prima facie is entitled to recover the agreed wages for the full term, subject to his duty to be reasonably diligent in seeking other employment of a similar kind, and, if obtained, the compensation received therefor is to be deducted from the aggregate agreed amount. "By other employment is meant employment of a character such as that in which he was employed, or not of a more menial kind." Id. sec. 127; Bennett v. Morton, 46 Minn. 113, 48 N. W. 678; Wilkinson v. Black, 80 Ala. 329; Farrell v. School District, 98 Mich. 43, 56 N. W. 1053; Costigan v. Mohawk & Hudson R. R. Co., 2 Denio, N. Y., 609, 43 Am. Dec. 758; Fuchs v. Koemer, 107 N. Y. 529, 14 N. E. 445; Kramer v. Wolf Cigar Store, 99 Tex. 597, 91 S. W. 775; Leatherberry v. Odell, Ragan & Co. (C. C.), 7 Fed. 641.

Under the evidence in this case, we consider it a very close question whether the positions of manager and saleswoman in one of defendant's departments are so dissimilar that an employee, when tendered the same salary, is not required to accept either (Squire v. Wright, 1 Mo. App. 172), but have concluded that, if the master deliberately enters into a contract providing for the employment of another as manager, the employee has a right to insist upon retaining that grade, in the absence of any showing which would justify the master in reducing the rank of the servant. The grade of the employment may have been the inducing cause for this contract. When the change was proposed, the season for obtaining positions of that character had advanced, and while, perhaps, a very slight cause might have been sufficient to have justified defendant's action, we think, in the absence of a showing of some cause, the defendant must be held to have broken the contract.

Order affirmed.

NOTE.—*Right to Sue Before Expiration of Contract Period of Employment and Measure of Damages in Such Cases.*—The rule is well settled that there can be but one suit where there is wrongful discharge, and many expressions running through cases that the damages recoverable are subject to deduction by what plaintiff might *have* earned have tended to give the impression that damages are only calculable up to date of suit. But the following cases show this to be erroneous and, we believe, that there is no ground for such contention.

In G. A. Kelly Plow Co. v. London (Tex. Civ. App.), 125 S. W. 974, the facts showed that plaintiff had a contract for five years for $4,000 per year and, being discharged, he was employed in other work at $200 per month for same period, viz., to 1912. Suit was brought before expiration of contract period. The opinion says: "The charge of the court assumed as a matter of law that the difference between amounts to be paid under the two contracts until June 30th, 1912, was the correct measure of appellee's damages. We think this was error. Actions of this class are not to recover unpaid wages, but for damages, and compensation for the injury sustained is the object sought. The rule for ascertaining the amount, which should be awarded to an employee who has been discharged in violation of his contract is usually stated to be the difference between what he would have received under the broken contract had it been continued, and that which he may by the exercise of ordinary diligence receive in some other employment. This rule does not necessarily imply that, when the employee, after his discharge, has made a second contract, even though it may be one of which the opposite party could not complain, the difference in the value of the two fixes, as a matter of law, the amount of the damages. In passing upon the question of damages the jury should be left free to take into consideration the character of the two contracts, the situation and condition of all the parties, the probability or improbability of the discharged being able to carry out his first undertaking, the vicissitudes and uncertainties attending life, and the likelihood of a promotion before the end of the term of the broken contract." Here it is perceived that juries have wide play for the exercise of their judgment.

In Seymour v. Oelrichs (Cal.), 106 Pac. 88, it was contended, that, when the action is tried before expiration of the term of service, the measure of damage is the actual damage sustained up to the time of trial, to-wit: What would have been received but for discharge, less what has or might have been earned from other employment, but the court relied on such cases as Hamilton v. Love, 152 Ind. 645, 53 N. E. 182, 71 Am. St. Rep. 384, where it was said all damages, whether present or prospective, must be included in the recovery. "A single judgment for the injury bars all other claims. The suit may be brought at any time after the breach, either

before the expiration of the term of the contract or afterwards, within the statutory limits. But whether brought before or after the expiration of the term of the contract, the measure of damages is the same." There is also cited by the California opinion, Lally v. Cantwell, 40 Mo. App. 50, where it is said: "Nor is the servant confined to damages which have accrued up to the institution of the suit, or even up to the day of trial, as the defendant's counsel erroneously supposes, where the damages are of a continuing character."

In Boland v. Quarry Co., 127 Mo. 520, 30 S. W. 151, all prior Missouri cases are considered and it was held that an instruction for the whole amount to the expiration of the contract after allowing credit for what plaintiff has already earned and what the jury may believe he will be able to earn between now and March 31st, 1893, was approved.

This rule was applied in Pierce v. R. Co., 173 U. S. 1, to an agreement in writing between a mining company and a machinist, made in settlement of a claim for injuries, whereby the company agreed to give him employment during his disability at a certain sum. He was discharged after a few months while still under disability to do full work. The court said: "The plaintiff was not bound to wait to see if defendant would change its decision and take him back into its service, or to resort to successive actions for damages from time to time; or to leave the whole of his damages to be recovered after his death. But he had the right to treat the contract as absolutely and finally broken by the defendant; to maintain his action, once for all, as for a total breach of the entire contract and to recover all that he would have received in the future as well as in the past had the contract been kept. * * * The difficulty and uncertainty in estimating damages that the plaintiff may suffer in the future is no greater in this action of contract, than they would have been if he had sued the defendant in an action of tort. * * * In assessing damages, deduction should, of course, be made of any sum that the plaintiff might have earned in the past or might earn in the future."

In Rightmire v. Hirner, 188 Pa. 325, 41 Atl. 538, suit was brought before expiration time of contract and an instruction, that: "This contract had practically three years to run, and if they deprived him of that benefit they ought to pay what that contract is worth, and that is the profit which he would have gotten out of it," was condemned as being too general as leaving open a very wide door for speculation on the part of the jury, especially as the amount of their verdict" was apparently on the assumption that plaintiff could be idle for that time, yet be as well off as if industriously engaged. It was expressly ruled in Wilke v. Harrison Bros. & Co., 166 Pa. 202, 30 Atl. 1125, that it was correct to refuse an instruction that plaintiff could not recover more than due up to time of suit less what was earned subsequent to discharge.

In Daniell v. Railroad, 184 Mass. 337, 68 N. E. 337, it was contended as to contract for employment so long as plaintiff should perform the duties of his place in a thorough, honest and business-like manner, that only nominal damages were recoverable, as all elements of other damage are too uncertain, was rejected. It was said that this came under a prior ruling where there was a contract giving plaintiff the option of continuing in defendant's employ, if he wished to continue therein.

In Forked Deer Pants Co. v. Shipley, 25 Ky. Law Rep. 2299, 80 S. W. 476, it is said: "The rule is where the employee is discharged before the expiration of his contract, he may recover the contract price for the remainder of the term, less what he has earned or might earn by reasonable diligence. He is not required to wait until the end of his term before bringing his suit. The trial here took place before the end of the year contracted for, and, while it is necessarily somewhat of an approximation what she might earn by diligence during the year, this is permissible and is the most that can be required of her."

As showing how favorable to a discharged employee a court may be, the following case is referred to:

In Development Co. v. King, 170 Fed. (2d C. C. A.) 923, it was claimed that a $3,000 salary received after plaintiff's discharge should be deducted, but the court said: "It appears that in order to obtain what he supposed would be permanent employment with the Asphalt Company, plaintiff invested, in January, 1903, $5,000 in its stock and was elected vice-president at an annual salary of $4,000. In September, 1903, the company became insolvent and the amount invested became a total loss, leaving as a result a net loss of $2,000. We think that the purchase of the stock and the employment as vice-president must be considered as a single transaction, the payment of the salary being conditioned upon the acquisition by plaintiff of an interest in the company. * * * The purchase of the stock was an expense incident to obtaining the employment." This seems, however, to go pretty far. If the stock had any value, or supposed value at the time, it would seem, that at least that should be considered and deduction should only be made from the $3,000 of the difference between its estimated value and what was paid for it. Furthermore, it was deemed by plaintiff to be worth $5,000 as connected with a permanent employment. Defendant should not be made responsible for miscarriage in plaintiff's speculations in stock. C.

JETSAM AND FLOTSAM.

ADVISABILITY OF ADOPTING THE TORRENS LAW—A CRITICISM.

Hon. T. C. Sparks, in a recent number of The Brief, the organ of the Phi Delta Phi Society, criticises the Torrens system and presents arguments against the expediency of its adoption. He says:

The question of the simplification of our land title system should and doubtless does appeal to every thoughtful and conscientious lawyer, as, other things being equal, a consummation greatly to be desired. That our present system of transferring title to land is not all we have a right to hope for does not admit of question, and those of us who know most about its pitfalls and complexities are the ones who most fully realize the need for beneficial reforms. To such an extent is this true that I doubt whether one of us ever undertook the examination of

an abstract of title without a consciousness of the fact that he was in great danger of reaping a whirlwind.

All will and do admit, I think, that our present system should be improved and simplified wherever possible, and this feeling is now finding expression in this state among a few well-meaning statesmen who are making an effort to secure legislation adopting a system of registration based upon the so-called Torrens Law, and effecting radical departures from our present method of making transfers.

The proposed system received its name from Sir Robert Richard Torrens, by whom it was devised and under whose supervision it was first put into operation in Australia It went into effect there July 1, 1858, and is therefore over fifty years old. The basic principle of this system is the registration of the title of land, instead of registering, as the old system requires, the evidence of such title. The nearest approach to that idea known to us in practice is the way in which we transfer shares of stock in a corporation. Under it only the ultimate fact or conclusion that a certain party has title to a particular tract of land is registered, and a certificate thereof delivered to him. In its general scope, it provides that, as to all lands within its operation, the registration of title shall be substituted for the system of registering deeds heretofore in operation, and that every registered title shall at once, with certain specific exceptions in some cases, become indefeasible in the hands of the purchaser for value from the registered owner. Under our present system the entire evidence from which proposed purchasers must, at their peril, draw such conclusions, is registered.

The proposed law has been designated a system of conveyancing by bookkeeping, and this more nearly expresses the idea of what its author apparently hoped to make it, than anything else would. If the title to a chattel can be transferred from one person to another by merely making an entry in a book, why cannot the title to real estate be transferred in the same way? This was evidently the original idea when reduced to its last analysis. But such reasoning does much violence to the understanding we have had, theoretical and fanciful, perhaps, inherited from feudal times, it is certain, that property in lands is especially sacred. Following out this idea, all owners of lands have been assured heretofore as one of their fundamental rights, that unless their lands were required for a public use they might retain them in specie, placing upon their value any estimate that might be suggested to them by judgment, sentiment or caprice; and it has not heretofore been within the combined authority of the departments of the government of the state to say that estimate was too high.

At the risk of being a little premature, I will state at this point that the very best solace a land owner whose title is taken from him wrongfully by the operation of the Torrens Law can possibly hope for, is, that he may be reimbursed for it at a price to be fixed by someone else; and even this poor privilege is denied him if there is no money in the insurance fund with which to compensate him.

But more than this, in order to obtain even a possibility of reimbursement he must bring a suit and submit himself to all the harrassing uncertainties, delays and expenses so familiar to all our clients. Vested rights should hardly be subjected to a possibility of such a hazard under the forms of law, however convenient or simple it may be, and even though the lawyers would be the chief beneficiaries of such a system.

It has also been suggested that while such mistakes are possible under the proposed system, they do not in fact occur. This does not comport very well, however, with the information I have received that the insurance fund which accumulates under the system, at the rate of charges heretofore made, is, in some localities, actually too small to meet the losses as they occur. But it is enough for me that such injustices are possible, even should they, because of superior care on the part of those in charge, never actually occur. No such consequences can attach under our present system.

The probability is however, that the offices created by the act would be political offices, and especially that of registrar. As for myself, I do not want any man whose chief qualification is his political influence to have the right to sit in judgment on the ownership of my property, as he would after the initial registration whenever a transfer was made. This objection may be said to be merely incidental, and that arrangements might be made to take the office out of politics; possibly this might be accomplished, but I cannot make myself feel entirely secure on that point.

The certificate of land titles by a public officer, as compared with the same service by a private person or corporation, is not more satisfactory than would be the service of the city or county physician, as compared with that of your chosen family physician. Most of us would not want either at any price largely for the very reason that it is public service. We would rather pay more and get strictly personal service.

But recurring to Sir Robert Torrens, and his experiences with the system in Australia and England, it is said that after he had spent some years in endeavoring to put his system into practical operation in Australia, he became less enthusiastic about its merits, at least as far as any other than a new country was concerned.

Upon his return to England and entering the English Parliament after several years' actual trial of his system under his own supervision in Australia, he never urged its adoption in England, and when a bill was introduced by another and enacted into law by the English Parliament, permitting titles to be registered, he never registered the title to an acre of his own land under it, although he was a large land owner in the counties to which the law applied The fact that he did not approve of his own work, except at least for a new country, is no conclusive proof that the work was not meritorious, but it seems strange, in view of his superior knowledge of it, that its own father—the one who presumably knew most about it—would not favor it, if the system is so simple and satisfactory in its operation.

The fact is that by the time it was adopted in England the system had, by gradual growth through statutory amendment and judicial interpretation, become much more than a mere system of book-keeping. One text-book of about 1,100 pages has been written on the subject, and it is so dry and technical you can almost hear it rattle as you read it. I was asked $9 for a similar work on the Australian law alone—this simple branch of the law, that only

requires a trip to the court house to execute it —by one of our leading publishers. This, too, notwithstanding the law is conceded to be undeveloped by judicial interpretation in many of its aspects, and notwithstanding the further fact that under the Australian law no complicated legal proceeding is necessary for the original registration, as would be the case here.

Under the Australian, English and Canadian systems, it is possible to create power in the registrar to register the title to lands on applications presented, without the burden of a judicial proceeding. They are not restricted by constitutional safeguards such as we have, both state and federal, in relation to "due process of law," "equal protection of the laws," etc. There the legislative will is supreme.

Our constitutional provisions were intended to guard against just such quick, easy final judgments as the original Torrens Law provided for. If the legislative branch of government in any of its states should see fit to set up a mere clerk in a minor office, vested with no judicial authority, and having no legal training at all, as the final arbiter and supreme judge of any property, or other right, however sacred, no one would now contend that under our system it would be a valid exercise of the authority conferred upon that body by the constitution; and yet it would be perfectly valid in England or its provinces.

The Supreme Court of Illinois (People v. Chase, 165 Ill. 527, sc. 36 L. R. A. 105), and the Supreme Court of Ohio (State, ex rel., v. Guilbert, 56 Ohio St. 575, sc. 38 L. R. A. 519), have passed on this identical question adversely to the validity of the law. Those two states were the first to enact the Torrens Law, the former in 1895, and the latter in the following year. The Illinois legislature amended their law, after the above decision was rendered so as to require a judicial proceeding for the initial registration, and in that form it has been held to be constitutional (People v. Simon, 176 Ill. 165, sc. 44 L. R. A. 801, and subsequent cases). In a similar form the law has been held to be constitutional in Massachusetts (by a divided court) (Tyler v. Judges, 175 Mass. 71, sc. 51 L. R. A. 433); in Minnesota (State, ex rel., v. Westfall, 85 Minn. 437, sc. 57 L. R. A. 297, and subsequent cases); in Colorado (People v. Crissman, 41 Colo. 450); and in California (Robinson v. Kerrigan, 151 Cal. 40). Most of these cases were ouster proceedings, brought against the registrars, in which the court merely held that there was enough of the law valid upon which to hang the office, and are not very satisfactory for that reason, though many phases of the proposition have been passed on in one or another of the decisions above mentioned. The Supreme Court of the United States seems never to have passed on the question.

In some of the states, and notably in California, a provision for the personal service of all named resident defendants, publication against named non-resident defendants, and a kind of "omnium gatherum" provision making a publication against all unnamed persons in interest good service, when addressed substantially to "those whom it may concern," has been held valid. The advisability of making such service sufficient upon which to take away valuable rights is another question which I do not care to discuss. Some such provision would seem to be almost an absolute necessity if such a law is to work at all successfully. Certain it is that such service would be strictly construed, and if there were any outstanding rights, they would not be held to be cut off unless such service was technically correct. This fact, together with the very best imaginable rule in relation to taxes, judgments, mechanic's liens, etc., seems to me to render it unsafe to take a Torrens title without an examination of the abstract of title to the property, and I am informed that in practice an abstract is quite uniformly required where the law is in force.

The character of action required by the law is a civil action in the nature of a suit to quiet title. Theoreticaly this proceeding is conducted by public officials employed under the act for each jurisdiction where the law is in force; but in practice the services of a privately employed abstracter and attorney are necessary, and are regularly employed to assist and guide the officials.

And, more than that, all I have said presupposes absolute honesty of purpose on the part of the official, which might not in all cases be present, and when we consider that he would be dealing with our titles, and not with our evidences of title, we may well hesitate to confer upon him such a degree of power to do harm, to our own or our client's interests. Again, if the experiences of the lawyers and other people of the states where the law is in force is any test, and it certainly should be so considered, I am informed by personal inquiry and also by reading the statements of information gathered by others, apparently reliable, that but few merchantable titles are registered, the proceeding being availed of principally by the owners of defective titles. The result of this, in practice, is that the fact of a title having been registered creates a suspicion against it. I was informed by a prominent attorney of Denver, with whom I discussed the law, that though the law had been in force there since 1902, he had never had occasion to examine it but once, and that was in connection with a title about which some serious question had been raised and a suit to quiet title was expected to be necessary. He spoke of it merely as a proceeding to quiet title. Even that proceeding was not brought by him, the defects in the title having been cured by quit claim deeds.

Such calamities as the Chicago fire and the San Francisco earthquake and fire account in a large measure for the successful operation of the law in Illinois and California, to the extent it has been successful in those states. It is said the charge of exorbitant prices for abstracts of title by the "Abstract Trust" in Chicago after the great fire there was the direct cause of the adoption of the law in Illinois, but even at that the success of the system there may well be doubted when we read the reports of what has been done under it.

The statement has been made that it has cost the state of Massachusetts over $1,100 for every title registered in that state.

Notwithstanding all I have said, and the further fact that a dual system of land titles would be created by the law when taken in connection with our present law, it is a fact that a law somewhat similar to the Illinois law now in force, or in other words, similar to the Australian law, except as amended to make it constitutional, has been adopted, and advisedly so we must assume, in Massachusetts, California, Oregon, Washington, Minnesota, Colorado, Ha-

waii, the Philippine Islands, and lastly in New York (Laws N. Y. 1908, chap. 444). The New York law was adopted after a very thorough investigation of its merits by a commission of seven members appointed for that purpose, three of whom dissented from the report. Such a general adoption of the law naturally leads one to believe that where the demand for such a system is sufficiently great and the amount of business that would probably be done thereunder is sufficient to warrant the employment of highly competent officials, the possible dangers to be feared might in large part disappear. If we are to have a Torrens Law it must not be a makeshift, but its administration must be by the most competent men it is possible to employ, and the offices thereby created must be absolutely free from politics. The charges for registration must be sufficiently high to insure those availing themselves of it that there will always be a fund with which to indemnify them against loss, but even then I fear much injustice would be done for which there would be no adequate remedy in fact.

BOOK REVIEWS.

THE MODERN LAW OF LABOR UNIONS.

This volume under the above title is called "a treatise" by W. A. Martin, Reviewing Editor of Cyc, and author of many important articles in that work. Its text proper covers 450 pages, and there is an Appendix of Forms of Pleadings, Injunctions and Restraining Orders in labor union questions. The volume is a well compiled review of cases with discriminative observation rulings. It treats of strikes, boycotts, picketing, interference with interstate commerce, contempt, internal administration of labor unions, union labels the right to organize for betterment of labor conditions and to advance wages, etc., etc.

There is a dispassionate review of questions, and while the author firmly maintains the right of labor to protect itself, he freely concedes that its demands have frequently gone beyond what a proper recognition of the right of non-union labor requires, and he pronounces against intimidation through force.

The book, on the whole, is conservative in tone and should advance the interests of employer and employee in pointing the way to mutual conservation of their interests.

Tracing the history of English statutes back to 1349, it is shown, that labor's rights have advanced step by step with enlightened legislation in fuller recognition of individual rights on other subjects.

This book we regard as a valuable contribution to legal literature, and of practical use in litigation concerning labor disputes.

The volume is in brown legal buckram, of excellent typographical quality and from the publishing house of John Byrne & Co., Washington, D. C. 1910.

SECRET LIENS AND REPUTED OWNERSHIP.

This volume of less than 200 pages of text is by two practicing lawyers of the New York Bar, Mr. Abram I. Elkus and Garrard Glenn. It traces the reputed ownership doctrine as giving rise to estoppel in favor of subsequent creditors in a very forceful way, and strongly suggests, by implication, the great need of statutory regulation going beyond what is provided by recording acts, covering conditional sales and chattel mortgages.

Interestingly, too, it shows that record is far from saving creditors from being deceived by an apparent ownership inducing credit and how decision has narrowed down a mortgagee's rights very closely in favor of unsecured creditors thus misled.

As a cognate subject the use of a corporation as a screen for defrauding creditors is considered.

The book is not bulky, but cases are carefully treated and distinguished, but there is a most decidedly federal leaning in it and reliance on federal courts to work out fixed principles for the business world. This we deem a mistake, as there is little to commend in federal judicial machinery than as exists in the highest court, and states will not be undoing precedents they make because of what it may say once in a while.

The Bulk Sales acts are noticed quite frequently, and indeed it may be said, that the importance of the reputed ownership theory is mainly as credit is affected in trade.

The volume is law buckram and published by Baker, Voorhis & Company, New York. 1910.

ENCYCLOPEDIA OF EVIDENCE. VOL. XIV.

The final volume of the series under the above title reaches our table, running in titles from Waste to Written Instruments. There is also in this volume the General Index to the entire set.

The editor, Mr. Edgar W. Camp, has produced a very creditable work; the cases supporting to the text being something more than a mere citation, but more in the nature of an annotation, the reference generally showing concretely the facts upon which a ruling as to the admissibility or incompetency was predicated. Often, too, there are excerpts from the court's opinion, where conciseness aimed at in the text needs something of illustration, or the excerpt well displays the rationale of decision.

Indexing to a work of this kind is well calculated to be tedious as abounding in special instances, more than a text-book on the same subject but this again aids more than a text-book in discovery of rulings more directly in point. The profession should find this set of much practical utility.

Published by L. D. Powell Company, Los Angeles, Cal. 1909.

HUMOR OF THE LAW.

The negro boy was up for the fifth time on charges of chicken stealing. This time the magistrate decided to appeal to the boy's father.

"Now see here, Abe," said he to the darky, "this boy of yours has been up in court so many times for stealing chickens that I'm tired of seeing him here."

"Ah don't blame you, sah," returned the father. "Ah's tired o' seeing him here, too."

"Then why don't you teach him how to act? Show him the right way, and he won't be coming here."

"Ah has showed 'im de right way, say," declared the old man earnestly. "Ah has suttenly showed 'im de right way, but he somehow keeps getting caught comin' way wid dose chickens!"

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Accord and Satisfaction**—Compromise and Settlement.—Indorsement and collection by creditor of check stating on its face that it is in payment in full held an accord and satisfaction, notwithstanding statement that it is accepted only as payment in part.—Barham v. Bank of Delight, Ark., 126 S. W. 394.

2. **Adoption**—Agreement to Adopt.—Equity will decree an adoption and its resulting rights in cases where no statutory adoption exists, when to do otherwise will result in palpable injustice.—Thomas v. Malone, Mo., 126 S. W. 522.

3. **Adverse Possession**—Persons Against Whom Prescription May Run.—Where the legal title of a trust estate is executed in the life tenant, and the legal title to the remainder is still in the trustee, limitations may run against the life tenant as to the life estate, and against the trustee as to the esate in remainder.—Milton v. Pace, S. C., 67 S. E. 458.

4.——Property of State.—In the absence of a provision making the state subject to the statute of limitations, no title by adverse possession can be acquired against the state.—State v. City of Seattle, Wash., 107 Pac. 827.

5. **Assignments for Benefit of Creditors.**—Contracts.—An assignee for the benefit of creditors was not bound to complete a construction contract made by the assignor before insolvency, though the assigned estate was liable for the breach thereof.—Simmons v. Westlake Const. Co., Mo., 126 S. W. 518.

6. **Attorney and Client**—Contract for Services.—The validity of a provision in a contract for an attorney's services, that, if the client settled without his consent, he should pay a sum equal to half of the amount claimed in the petition, could only be called in question in case he sought to enforce it against his client.—Wright v. Kansas City, Ft. S. & M. R. Co., Mo., 126 S. W. 517.

7.——Liability of Attorneys to Adverse Parties.—Attorneys may interpose any defense or supposed defense for their clients, and for doing so cannot be held liable in damages.—Kruegel v. Murphy, Tex., 126 S. W. 343.

8. **Bankruptcy**—Adjudication.—The adjudication in bankruptcy of a corporation does not create a lien in favor of the creditors, and is not equivalent to a judgment attachment, or other specific lien upon the assets of the bankrupt.—Marine Sav. Bank v. Norton, Mich., 125 N. W. 754.

9.——Reformation of Instrument.—In an action to reform a chattel mortgage given by a corporation, held that, if the reformation is proper to be made between the parties to the mortgage, the general creditors of the corporation cannot object.—Marine Sav. Bank v. Norton, Mich., 125 N. W. 754.

10. **Benefit Societies**—Plan of Insurance.—A foreign life insurance company, authorized by the superintendent of the insurance department to do business in the state on the assessment plan, cannot issue certificates of membership, or make contracts of insurance, on any other plan.—Missey v. Supreme Lodge Knights & Ladies of Honor, Mo., 126 S. W. 559.

11. **Bills and Notes**—Action on Lost Note.—To make an indorser liable in a suit on a note, held, that the allegation and the evidence must show the demand and notice of dishonor to have been given upon such a day as will charge the defendant.—Hoyland v. National Bank of Middlesborough, Ky., 126 S. W. 356.

12.——Presentment and Notice of Non-Payment.—Under Negotiable Instruments Law, the indorsers of a note held not discharged by failure of payee to present the note for payment at maturity.—Bessenger v. Wenzel, Mich., 125 N. W. 750.

13. **Boundaries**—Variations of Compass.—In attempting to locate the lines of old boundaries by new surveys, the variations of the magnetic needle should not be ignored, though the actual boundary does not change with the variation of the needle.—Whitfield v. Roberson, N. C., 67 S. E. 494.

14. **Brokers**—Implied Contract.—If defendant agreed to pay plaintiff for his services without specifying the amount, the law would imply an obligation to pay a reasonable compensation.—Hess v. Hayes, Iowa, 125 N. W. 671.

15.——Right to Commission.—A broker who is a mere middleman for the sale of real estate may recover commissions from both parties.—Sternberger v. Young, N. J., 75 Atl. 807.

16. **Carriers**—Carriage of Goods.—Where shipper produces shipping receipt showing delivery of the goods, and demands an acounting, the burden is on the carrier to show fraud in the receipt or a delivery of the goods.—Smith v. Austro-American S. S. Co., La., 51 So. 841.

17. **Carriers of Goods**—Right of Shipper to Designate Route.—A shipper has the right to designate the route by which his goods should be carried by the different railroads over which they are destined to pass.—Thompson v. Missouri, K. & T. Ry. Co. of Texas, Tex., 126 S. W. 257.

18. **Carriers of Live Stock**—Contract for Stock Attendant.—A contract between a shipper and a carrier, providing for the shipper's attendance upon the stock during transit, held not unreasonable or against public policy.—Leslie v. Atchison, T. & S. F. Ry. Co., Kan., 107 Pac. 765.

19. **Carriers of Passengers**—Intoxicated Passenger.—The rule as to the care required by a carrier for the protection of an intoxicated passenger does not apply unless the carrier's agents knew, or by proper diligence could have known, of his condition.—Pinson v. Southern Ry., Carolina Division, S. C., 67 S. E. 464.

20.——Liability for Negligence.—A carrier is liable for the slightest negligence resulting in injury to a passenger, and the utmost care and diligence of cautious persons to prevent such injury is imposed by law.—Washington, A. & Mt. V. Ry. Co. v. Trimyer, Va., 67 S. E. 531.

21.——Negligence.—The derailment of a car establishes prima facie the carrier's negligence toward a passenger, where the passenger's due care is not contested.—Minihan v. Boston Elevated Ry. Co., Mass., 91 N. E. 414.

22. **Cemeteries**—Character of Corporation.—A cemetery association incorporated to lay out and maintain a public cemetery, is a public, and not a private, corporation, and has no authority to issue or sell stock.—Hanslip v. Osage City Cemetery Ass'n, Kan., 107 Pac. 785.

23. **Champerty and Maintenance**—Contract Involving Contingent Attorney's Fees.—A contract for a contingent attorney fee held not void as contrary to public policy because it required the attorney's consent to a settlement or compromise.—Wright v. Kansas City, Ft. S. & M. R. Co., Mo., 126 S. W. 517.

24. **Charities**—Hospital for Poor.—A hospital established for the free treatment of poor patients may receive payments from rich persons who are permitted to avail themselves of its benefits.—New England Sanitarium v. Inhabitants of Stoneham, Mass., 91 N. E. 385.

25. **Chattel Mortgages**—Bona Fide Purchasers.—Where the mortgagee authorizes the mortgagor to sell the mortgaged chattels, the mortgage lien thereon is discharged.—Fincher v. Bennett, Ark., 126 S. W. 392.

26.——Notice.—Notice of a chattel mortgage is equivalent to filing thereof as to subsequent purchasers and mortgagees.—People v. Burns, Mich., 125 N. W. 740.

27.——Sales Contract for Piano.—A provision in a sales contract for a piano which is essentially a mortgage that, in case of failure to pay for the instrument in full, all payments made might be retained by the seller for its use, is void, and, though it is entitled to interest, it has no right to rent in case of the buyer's default.—Chase-Hackley Piano Co. v. Kennedy, N. C., 67 S. E. 488.

28.——Validity as Against Creditors.—The rule that a chattel mortgage is invalid as against creditors, unless filed, held to apply to those becoming creditors during the interval while the mortgage is not on file.—People v. Burns, Mich., 125 N. W. 740.

29. **Contracts**—Consideration.—If plaintiff's claim against defendant was doubtful, the waiver of the claim or of the right to suit was sufficient consideration for defendant's promise to pay certain damages.—Snohomish River Boom Co. v. Great Northern Ry. Co., Wash., 107 Pac. 848.

30.——Rescission.—An executory bilateral contract may be rescinded or canceled by mutual consent of the parties in whole or in part.—Hanson & Parker, Limited, v. Wittenberg, Mass., 91 N. E. 383.

31. **Contribution**—Enforcement.—An execution defendant, acquiring the execution, held entitled to enforce it against the property of his co-defendant for contribution.—Borders v. Vance, Ga., 67 S. E. 543.

32. **Conversion**—Sale Under Order of Court.—The conversion of property from realty to personalty in partition by tenants in common takes place only when the land is sold and the sale confirmed, and not when the decree of sale is made.—McLean v. Leitch, N. C., 67 S. E. 490.

33. **Corporations**—Liability for Torts.—Agreement of a grantee corporation with a grantor corporation to pay all the latter's debts held not to give a right of action against the grantee to one injured by a tort of the grantor before the transfer.—Louisville & N. R. Co. v. Hughes, Ga., 67 S. E. 542.

34.——Stock Subscriptions.—In the absence of special charter or statutory provisions that corporate stock shall be paid for in money, such subscription may be paid in property, if done in good faith and on a fair valuation of the property.—Lea v. Cutrer, Miss., 51 So. 808.

35.——Subscription to Stock.—A corporation held to have no authority to accept subscriptions to stock upon special terms, fraudulent as to other subscribers or creditors.—Meholin v. Carlson, Idaho, 107 Pac. 755.

36.——Transfer of Partnership Assets to Corporation.—Where members of an insolvent partnership form a corporation and a third person in good faith invests in the reorganization, partnership creditors can seize only the partners' interest to satisfy the partnership debts.—Hall v. Baker Furniture Co., Neb., 125 N. W. 628.

37.——Transfer of Property.—A corporation could not transfer its property to a stockholder in exchange for his shares of stock.—Hanslip v. Osage City Cemetery Ass'n, Kan., 107 Pac. 785.

38. **Covenants**—Warranty of Title.—If a hostile title asserted is a legal title in fact outstanding, but not enforceable in equity, grantee may sue to quiet title, or interpose an equitable defense, and may recover against grantor reasonable expenses involved in either case.—Smith v. Keeley, Iowa, 125 N. W. 669.

39. **Criminal Evidence**—Locality of Offense.—The formation outside of the county of an unlawful combination for the purpose of raising the price of a commodity is not an offense within the jurisdiction of the county unless the offense is consummated there by selling the commodity at more than its real value.—International Harvester Co. of America v. Commonwealth, Ky., 126 S. W. 352.

40.——Opinions.—A matter of opinion may amount to an affirmation of fact when the parties are not dealing upon equal terms, and one of them has means of information not equally open to the other.—Boelk v. Nolan, Or., 107 Pac. 689.

41. **Criminal Law**—Illegal Sale of Liquor.—It is not a bar to a prosecution for illegal sale of liquor that the chief of police gave the buyer the money to make the purchase, so as to have the seller indicted and convicted.—State v. Smith, N. C., 67 S. E. 508.

42.——Nature of Offenses.—Whether an offense is a felony or a misdemeanor is determined not by its characterization, but by the punishment authorized under Pen. Code, § 17.—People v. Sacramento Butchers' Protective Ass'n, Cal., 107 Pac. 712.

43. **Criminal Trial**—Instructions.—The court need not charge as a matter of law that evidence of oral statements alleged to have been made by accused should be received with caution.—Commonwealth v. Howard, Mass., 91 N. E. 397.

44. **Deeds**—Common Law Rule.—The ancient common-law rule was that the word "heirs" should appear, as indicating the grantee's estate, either in the premises or habendum, and generally when appearing in the warranty clause alone it would not enlarge a life estate into a fee.—Carolina Real Estate Co. v. Bland, N. C., 67 S. E. 483.

45.——Delivery.—Where the grantor retains custody of the deed during his life, the paper cannot have effect as a deed at his death.—Rountree v. Rountree, S. C., 67 S. E. 471.

46. **Divorce**—Decree.—The district court has jurisdiction to try a divorce proceeding, and, if the divorce is granted, to decree as to the property rights of the parties; but, if divorce is denied, the court has no power to adjust the property rights of the parties otherwise than fixed by law.—Burns v. Burns, Tex., 126 S. W. 333.

47.——Suit by Wife.—A wife suing for divorce held entitled to make an agreement with her attorney for his compensation; but the court will allow only such sum as it deems proper.—State v. Superior Court of King County Wash., 107 Pac. 876.

48. **Domicile**—Fact and Intent.—To acquire a domicile, actual residence and the intention to remain, either permanently or for an indefinite time, without any fixed or certain purpose to return to the former place of abode, are required.—Winans v. Winans, Mass., 91 N. E. 394.

49. **Ejectment**—Writ of Possession.—A party who has been adjudged to deliver possession of land to another claimant held not estopped from purchasing an outstanding title.—Baker v. Butte Water Co., Mont., 107 Pac. 819.

50. **Embezzlement**—Indictment.—In a prosecution for embezzlement from a foreign insurance company, it was no defense that the money embezzled was collected for insurance written illegally.—State v. Blakemore, Mo., 126 S. W. 429.

51. **Eminent Domain**—Amendment of Judgment.—A railroad condemning land held to have the right to have the judgment reformed so as to include a tract of land omitted from the petition by mistake.—Getzendaner v. Trinity & B. V. Ry. Co., Tex., 126 S. W. 328.

52. **Estoppel**—Equitable Estoppel.—An estoppel cannot be used to shift a loss from one careless person to another when the loss could not have happened without the earlier negligence of plaintiff.—C. H. Rugg Co. v. Ormrod, N. Y., 91 N. E. 366.

53. **Evidence**—Insanity.—Insanity, once established, is presumed to continue until the contrary is shown.—Mileham v. Montagne, Iowa, 125 N. W. 664.

54.——Competency.—Where the motive or belief of a person is a material fact, he may testify directly to it in connection with his testimony, detailing the circumstances under which he was acting.—Bowers v. Atchison, T. & S. F. Ry. Co., Kan., 107 Pac. 777.

55.——Intimidation of Witness.—Evidence of attempt to intimidate witness is not admissible, in the absence of a showing that the opposite party is connected therewith.—Minihan v. Boston Elevated Ry. Co., Mass., 91 N. E. 414.

56.——Local Option.—The state must prove that the local option law was in effect in the county in which the offense is claimed to have been committed.—Woodward v. State, Tex., 126 S. W. 270.

57.——Opinions.—In an action for breach of a logging contract, it was not error to permit a witness to testify that a tree, to square 12 inches, should be 19 inches in diameter.—Whitfield v. Rowland Lumber Co., N. C., 67 S. E. 512.

58.——Usury.—Failure to set up usurious interest in an action on a note held not to bar a subsequent action under Rev. St. 1895, art. 3106, for the penalty for receiving usurious interest.—Long v. Moore, Tex., 126 S. W. 345.

59. **Executors and Administrators**—Payment of Debts.—Where an administrator fails to perform his duty in subjecting the real estate of his intestate to the payment of his debts, the creditors of the intestate may compel the administrator to do so.—Hobbs v. Cashwell, N. C., 67 S. E. 495.

60. **Fire Insurance**—Assessments.—Limitations begin to run against the right of action by the receiver of an insolvent mutual fire insurance company to recover an assessment from the date of the assessment.—Nichol v. Newman, Mich., 125 N. W. 760.

61.——Construction of Policy.—Exceptions in a fire policy must be liberally construed in favor of insured and strongly against insurer.—Pacific Union Club v. Commercial Union Assur. Co., Cal., 107 Pac. 728.

62.——Proof of Loss.—Where insurer denies all liability, it waives proofs of loss.—Higson v. North River Ins. Co., N. C., 67 S. E. 509.

63. **Guardian and Ward**—Conversion of Ward's Money.—The sureties of a guardian may be sued in the district court without a previous settlement of the guardian's accounts in the probate court.—Mitchell v. Kelly, Kan., 107 Pac. 782.

64. **Homicide**—Degrees.—No words, however opprobrious, will constitute legal provocation necessary to reduce a killing from murder to manslaughter.—State v. Bethune, S. C., 67 S. E. 466.

65.——Evidence.—The fact that on the day following the homicide defendant manifested no concern as to what had happened, and, when it became known that bloodhounds had been ordered, he mounted a wagon, and rode into the forest and remained there until all fear of being pursued had vanished, may be considered by the jury.—Hardy v. Commonwealth, Va., 67 S. E. 522.

66.——Motive.—On a trial of a husband for the murder of his wife, the extent of the inquiry into the relations between accused and his wife held largely within the discretion of the trial court.—Commonwealth v. Howard, Mass., 91 N. E. 397.

67. **Husband and Wife**—Gifts.—A gift from a wife to a husband must be the free act of

the wife, without coercion or fraud, and anything beyond a mere persuasive argument will render the gift invalid.—Schultze v. Schultze, N. J., 75 Atl. 824.

68. **Indictment and Information**—Election Between Counts.—In a misdemeanor prosecution, the state may introduce evidence under either count, not being required to elect between the counts.—Woodward v. State, Tex., 126 S. W. 271.

69.——Indorsement of Witnesses' Names.—Names of witnesses examined before the grand jury, who are to be called upon the trial of the cause, need not be indorsed upon an indictment.—Donnelly v. State, Neb., 125 N. W. 618.

70. **Interstate Commerce**—Jurisdiction of Court.—Under the interstate commerce act a court has not the power, in the first instance, to inquire into the reasonableness of a rate filed with the Commerce Commission, but the question is for the Commission.—Great Northern Ry. Co. v. Loonan Lumber Co., S. D., 125 N. W. 644.

71. **Judgment**—Actions for Fraud.—Fraud is deemed to be discovered whenever it is discoverable by the exercise of diligence reasonably to be expected of one in the position of the person defrauded.—Duphorne v. Moore, Kan., 107 Pac. 791.

72.——Collateral Attack.—A default judgment will not be held void upon collateral attack, even if the petition upon which it was rendered did not state a cause of action.—Brumbaugh v. Wilson, Kan., 107 Pac. 792.

73.——Res Judicata.—A judgment for one installment of a special assessment for a sewer construction tax held res judicata as to subsequent installments.—Auditor General v. Bishop, Mich., 125 N. W. 715.

74.——Validity.—A judgment based upon a willfully false affidavit for service by publication, is binding until corrected in some proper proceeding.—Duphorne v. Moore, Kan., 107 Pac. 791.

75.——Variance in Name.—A summons against "Miss Sue Dixon" held sufficient to support a judgment against "Sue R. Dixon."—Dixon v. Melton, Ky., 126 S. W. 358.

76. **Landlord and Tenant**—Liability for Repairs.—At common law, a landlord was not only under no obligation to make repairs in the absence of a covenant to do so, but was not entitled to enter for that purpose.—Hahs v. Cape Girardeau & C. R. Co., Mo., 126 S. W. 524.

77. **Limitation of Actions**—Accrual of Cause of Action.—Limitations commence to run against the heir of a decedent to set aside a conveyance by him on the ground of mental incompetency from the time of the ancestor's death.—Parker v. Betts, Colo., 107 Pac. 816.

78.——Applicability as to Suits to Quiet Title.—The right to sue to remove a cloud is a continuing one, to which the statute of limitations is not applicable.—Cooper v. Rhea, Kan., 107 Pac. 799.

79. **Master and Servant**—Contributory Negligence.—Where an employee violates the instructions of his employer which are known to him, while engaged in a dangerous employment, and such violation contributes to his injury, he cannot recover.—Athens Cotton Oil Co. v. Clark, Tex., 126 S. W. 322.

80.——Disobedience of Rules.—Where cars are equipped with coupling devices, a switchman who, in violation of the rule, goes between them to uncouple them is negligent, barring recovery, unless he is prevented in some way from using the coupling device.—Brannock v. St. Louis & S. F. R. Co., Mo., 126 S. W. 552.

81.——Injury to Servant.—If plaintiff was unnecessarily injured by the negligence of defendant's foreman after discovery of his peril, contributory negligence held no defense to his action for the injury.—Alabama Steel & Wire Co. v. Tallant, Ala., 51 So. 835.

82.——Letting of Hack and Driver.—The driver of a hack let by defendant to another to be used in a funeral procession held to remain the defendant's servant, so as to render defendant liable for injuries to a third person from the driver's negligence.—Hussey v. Franey, Mass., 91 N. E. 391.

83.——Rules of Railroad Company.—Rule of a railway, requiring brakeman signaling engineer to know that signal has been understood before acting under it, held reasonable.—Bowers v. Atchison, T. & S. F. Ry. Co., Kan., 107 Pac. 777.

84.——Safe Place to Work.—A master employing in his business substances and processes of which some one has, or should have, scientific knowledge, held required to acquaint a servant with the dangers ascertainable by a knowledge of the scientific principles governing the substances and processes.—Adams v. Grand Rapids Refrigerator Co., Mich., 125 N. W. 724.

85.——Selection of Physician.—A master in selecting a physician to attend injured employees held under the duty of using only ordinary care.—Wells v. Ferry-Baker Lumber Co., Wash., 107 Pac. 869.

86. **Mechanics' Liens**—Statutes.—A contract to purchase land does not make the purchaser the owner within the mechanics' lien statute.—Hubbell v. Texas Southern Ry. Co., Tex., 126 S. W. 313.

87. **Money Received**—Grounds.—Where money was paid to defendant for a certain purpose, which was subsequently abandoned, defendant must return it to the owner.—Brinser v. Fidelity Trust Co., Del., 75 Atl. 792.

88. **Municipal Corporations**—Obstruction of Alley.—Plaintiff, whose means of access to his place of business was destroyed by an obstruction of an alley, held entitled to recover from the city.—Sweeney v. City of Seattle, Wash., 107 Pac. 843.

89.——Ordinances.—Exemptions of any character claimed under municipal ordinances can only be claimed when the intent to grant the exemptions is expressed in the clearest and most unambiguous terms.—Edwards Hotel & City R. Co. v. City of Jackson, Miss., 51 So. 802.

90.——Regulation of Highway.—An ordinance limiting the speed of vehicles in streets held not invalid on the ground that it discriminates against the operators of motor vehicles.—Ex parte Snowden, Cal., 107 Pac. 724.

91.——Sewers.—It is the duty of a city to maintain its sewer drains so as to prevent clogging to the damage of property owners.—City of Cannelton v. Bush, Ind., 91 N. E. 359.

92.——Title to Ordinance.—A title to an ordinance held no part of the same; a title not being required by law.—Ex parte Snowden, Cal., 107 Pac. 724.

93. **Navigable Waters**—What Are.—A bayou navigable in fact must be regarded as navigable in law.—Bigham Bros. v. Port Arthur Canal & Dock Co., Tex., 126 S. W. 324.

94. **Negligence**—Contributory Negligence.—One cannot recover for injuries caused by the negligence of another, if his own negligence was to some extent the proximate cause of the result complained of.—Belle Alliance Co. v. Texas & P. Ry. Co., La., 51 So. 846.

95.——Excavation in Way.—Public user of a way across private land, long continued, implies an invitation to so use it.—Hanson v. Spokane Valley Land & Water Co., Wash., 107 Pac. 863.

96. **Obstructing Justice**—Admissibility of Evidence.—In a prosecution for resisting an officer, testimony by the officer as to threats by accused while being taken to jail, etc., held admissible.—Woodward v. State, Tex., 126 S. W. 271.

97. **Partnership**—Acquisition of Real Estate. —Real estate acquired with firm funds and for firm purposes held in equity firm property, subject to the payment of firm debts.—Walton v. Atkinson, Ala., 51 So. 826.

98.——Liability of Partners.—Where two persons hold themselves out as partners, it makes no difference, in an action for goods sold, whether there was in fact a partnership between them or not.—Bing v. Schmitt, Pa., 75 Atl. 854.

99. **Payment**—Medium.—If an agreement be construed as one to pay in something other than money, the law will award a money compensation for a breach of the agreement.—Van De Vanter v. Redelsheimer, Wash., 107 Pac. 847.

100. **Pleading**—Amendment.—Plaintiff held not entitled to amend declaration setting up a different kind of negligence after limitations become a bar.—Martin v. Pittsburg Rys. Co., Pa., 75 Atl. 837.

101.——Written Instrument.—A release written above plaintiff's signature on defendant's pay roll held a written instrument, so that, having been properly pleaded in the answer, plaintiff, in the absence of a verified denial, could not prove it to have been a forgery—Hahs v. Cape Girardeau & C. R. Co., Mo., 126 S. W. 524.

102. **Principal and Surety**—Discharge of Surety.—Payment by creditor to principal of money, which was proceeds of mortgaged cattle, held to discharge surety on note to the amount of such payment.—Lakeman v. North Missouri Trust Co., Mo., 126 S. W. 547.

103.——Release of Surety.—A surety on a lease held not released from liability by entry of the lessor upon the premises and dividing the same and reletting portions thereof.—Mulert v. Real Estate Trust Co. of Pittsburg, Pa., 75 Atl. 848.

104. **Public Lands**—Conflicting Patents.—The older of two patents controls in so far as their boundaries conflict.—Pace v. Asher, Ky., 126 S. W. 366.

105. **Quieting Title**—Jurisdiction of Court.—In an action to quiet title, the court has power to order a reference, either with or without the consent of the parties, and to set the reference aside and to resubmit again.—Poitevin v. Binnall, Iowa, 125 N. W. 653.

106.——Title of Plaintiff.—One holding under a quitclaim deed without covenants of warranty has sufficient title to maintain an action to quiet or remove a cloud from title.—Brodsky v. Nelson, Wash., 107 Pac. 840.

107. **Railroads**—Injuries to Alighting Passenger.—A railroad held bound to maintain platform at station in good condition, and responsible for accidents to person alighting from train by reason of defect.—McClanahan v. St. Louis & S. F. R. Co., Mo., 126 S. W. 535.

108.——Negligence.—Any negligence of a railroad company in not equipping all of its cars with air brakes, so as to permit their application to stop the train, held not the proximate cause of injury to a pedestrian on the track.—Pinson v. Southern Ry., Carolina Division, S. C., 67 S. E. 464.

109.——Res Ipsa Loquitur.—The fact that a person is thrown off a freight train by a jerk does not give rise to the doctrine of res ipsa loquitur.—Ray v. Chicago, B. & Q. Ry. Co., Mo., 126 S. W. 543.

110.——Vendor's Lien.—One conveying to a railroad a right of way may have a vendor's lien for the unpaid price.—Hubbell v. Texas Southern Ry. Co., Tex., 126 S. W. 313.

111. **Receivers**—Operating Expenses.—The rule that the expense of operating a railroad in the hands of a receiver is to be charged first on net income, and, when that is not sufficient, on the property itself or its proceeds of sale, held to flow from an equitable situation, and not to arise by operation of law.—St. Louis Union Trust Co. v. Texas Southern Ry. Co., Tex., 126 S. W. 296.

112. **Reformation of Instruments**—Right of Action.—A trustee in bankruptcy of a corporation held not entitled to contest a mortgagee's right to have a chattel mortgage given by the corporation reformed.—Marine Sav. Bank v. Norton, Mich., 125 N. W. 754.

113. **Religious Societies**—Judicial Supervision. —It is the exclusive province of religious tribunals, when considering only ecclesiastical interests, to construe their own statutes and ordinances, and to determine for themselves the regularity of their proceedings.—Ramsey v. Hicks, Ind., 91 N. E. 344.

114. **Sales**—Contracts—The signing by defendant of a freight receipt for lumber, ordered in his name by an unauthorized third person of plaintiff, held not to render him liable on the theory of a contract.—C. H. Rugg Co. v. Ormrod, N. Y., 91 N. E. 366.

115.——Implied Warranty.—There can be no implied warranty of quality where there is an express warranty.—Chase-Hackley Piano Co. v. Kennedy, N. C., 67 S. E. 488.

116. **Searches and Seizures**—Blacklisting Statutes.—The blacklisting statute requiring a corporation to give to its discharged employees a service letter stating the true reason for his discharge, does not violate the fourth amendment to the federal constitution, forbidding unreasonable searches and seizures.—St. Louis Southwestern Ry. Co. of Texas v. Hixon, Tex., 126 S. W. 338.

117. **Statutes of Limitations**—Municipal Corporations.—The legislature may take away from a municipality the right to plead the statute of limitations, whether it has run or not, where the matter involved is only a public concern.—State v. City of Seattle, Wash., 107 Pac. 827.

118. **Street Railroads**—Operation of Cars.—A street railway company is not entitled to the exclusive enjoyment of a portion of the highway where its rails are laid, though it is entitled to a certain preference by reason of the inability to turn out.—Callahan v. Boston Elevated Ry. Co., Mass., 91 N. E. 388.

119. **Telegraphs and Telephones**—Collection. —Where a telegraph company receives payment for messages, but sends them "collect," and damages proximately result therefrom, a recovery may be had.—Hall v. Western Union Telegraph Co., Fla., 51 So. 819.

120. **Trial**—Contradicting Immaterial Testimony.—Where a witness has been asked an immaterial question on cross-examination, another witness cannot be recalled in rebuttal to contradict the reply given.—Buck v. City of McKeesport, Pa., 75 Atl. 840.

121.——Misconduct of Parties.—In a civil damage action against a saloonkeeper for damages for the death of plaintiff's husband while intoxicated, held not reversible error for plaintiff to permit her child to sit with her in the courtroom for a time.—Merrill v. Tinkler, Mich., 125 N. W. 717.

122. **Vendor and Purchaser**—Performance of Contract.—A vendor held not entitled to defend an action for return of earnest money by showing title by limitations.—McLaughlin v. Brown, Tex., 126 S. W. 292.

123. **Wills**—Contest.—In proceedings to contest a will, where a forgery is alleged, the burden of proof is not on contestant to prove that deceased did not sign the paper.—Venable v. Venable, Ala., 51 So. 833.

124.——Mental Capacity.—In an action to set aside a will for mental incapacity of testator, the jury may consider testator's commitment to an insane hospital, although subsequently discharged as sane.—Mileham v. Montagne, Iowa, 125 N. W. 664.

125.——Undue Influence.—Declarations of testatrix are only admissible on the issue of testamentary capacity and are inadmissible to show undue influence.—In re Davis' Will, N. J., 75 Atl. 827.